



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 12, 1998

Mr. Helmut (Hal) Talton  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR98-2669

Dear Mr. Talton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 119538.

The Texas Department of Transportation (the department) received a request for information concerning an individual who allegedly suffered damages when she fell along the service road of I-75 in Dallas, Texas. You claim that the requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the sample documents you have submitted.<sup>1</sup>

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499(1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

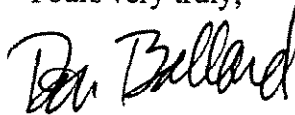
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under 552.103(a).

In Open Records Decision No. 638 (1996), we concluded that a governmental body may establish that litigation is reasonably anticipated by showing that (1) it has received a claim letter from an allegedly injured party or his attorney and (2) stating that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA") or applicable municipal statute or ordinance. You have submitted to this office a letter from an allegedly injured individual. You state that this party "alleges to have sustained bodily injury" when she fell in a hole along I-75. You state that "[a]lthough the letter is vague as to the extent of the alleged injury, a court would likely find that the letter constitutes a sufficient notice of tort claim, and thus, the letter would meet the requirements of the Texas Tort Claims Act." After review of the submitted records, we conclude that the department has met its burden of showing that litigation is reasonably anticipated and the information is related to the anticipated litigation. You may withhold the requested information pursuant to section 552.103(a).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB\nc

Ref: ID# 119538

Enclosures: Submitted documents

cc: Shalor Bogard  
AIC Manager  
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(w/o enclosures)